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February 19, 2003

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TN REGULATORY AUTHORITY
DOCKET ROOM

Honorable Sara Kyle, Chairman
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243-0505

In Re: Complaint filed on behalf of MCImetro Access Transmission Services,
LLC and Brooks Fiber Communications of Tennessee, Inc.

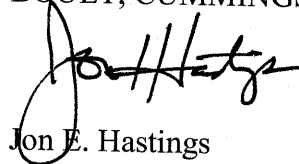
Docket No. 03-00145

Dear Chairman Kyle:

Enclosed please find the original plus thirteen (13) copies of a Complaint filed on behalf of MCImetro Access Transmission Services, LLC and Brooks Fiber Communications of Tennessee, Inc. together with a check in the amount of \$25.00. A copy of the Complaint has been served on BellSouth Telecommunications, Inc.

Very truly yours,

BOULT, CUMMINGS, CONNERS & BERRY, PLC



Jon E. Hastings

**BEFORE THE
TENNESSEE REGULATORY AUTHORITY**

In the Matter of:

Complaint of MCImetro Access
Transmission Services, LLC and
Brooks Fiber Communications
Of Tennessee, Inc. Against
BellSouth for Overcharging for
High-Capacity Circuits

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Docket No. _____

COMPLAINT

MCImetro Access Transmission Services, LLC ("MCImetro") and Brooks Fiber Communications of Tennessee, Inc. ("Brooks Fiber") (collectively, "WorldCom") hereby bring this Complaint against BellSouth Telecommunications, Inc. ("BellSouth") for breach of the parties' interconnection agreements with respect to the rates charged for certain high-capacity circuits. Despite the clear language of the interconnection agreements entitling WorldCom to obtain these circuits for unbundled network element ("UNE") or interconnection rates, BellSouth has charged and continues to charge higher special access rates for these circuits. WorldCom seeks in this action to recover the amount of past charges in excess of UNE or interconnection rates (as applicable) and to require BellSouth to bill UNE or interconnection rates for these circuits going forward. Accordingly, WorldCom shows the Authority as follows:

PARTIES

1. MCImetro Access Transmission Services, LLC is a Delaware limited liability company with its principal place of business at 500 Clinton Center Drive, Clinton, Mississippi 39056. MCImetro has a Certificate of Authority issued by the Authority that authorizes

MCImetro to provide local exchange service in Tennessee. MCImetro is a “telecommunications carrier” and “local exchange carrier” under the Telecommunications Act of 1996 (“Act”).

2. Brooks Fiber is a Delaware company with its principal place of business at 500 Clinton Center Drive, Clinton, Mississippi 39056. Brooks Fiber has a Certificate of Authority issued by the Authority that authorizes Brooks Fiber to provide local exchange service in Mississippi. Brooks Fiber is a “telecommunications carrier” and “local exchange carrier” under the Act.

3. BellSouth is a Georgia corporation, having offices at 675 West Peachtree Street, Atlanta, Georgia 30375. BellSouth is an incumbent local exchange carrier (“ILEC”), as defined in Section 251(h) of the Act.

JURISDICTION

4. The Authority has jurisdiction with respect to the claims asserted in this Complaint under T.C.A. 65-4-119. The Authority also has jurisdiction under the Authority’s Orders dated April 29, 1997 in Docket No. 96-01484; May 30, 1997 in Docket No. 97-00445; August 21, 2000 in Docket No. 99-00583; and September 20, 2002 in Docket No. 00-00309, in which the Authority approved the MCImetro and Brooks Fiber interconnection agreements at issue in those dockets, which agreements provided for dispute resolution by the Authority. Moreover, the Authority has jurisdiction to enforce interconnection agreements inherent in its authority under Section 252 of the Act to approve such agreements.

BACKGROUND

A. The Parties' Interconnection Agreements

5. An interconnection agreement between Brooks Fiber, Brooks Fiber Communications of Mississippi, Inc. and BellSouth dated September 11, 1996 was approved by the Authority by Order dated April 29, 1997 ("1996 Agreement").

6. An interconnection agreement between MCImetro and BellSouth was approved by the Authority by Order issued May 30, 1997 ("1997 Agreement"). The 1997 Agreement had a term of three years and remained in effect (subject to true-up) until a follow-on agreement was executed by the parties and approved by the Authority.

7. The 1996 Agreement remained in effect until July 1, 1998, the effective date of an agreement between Brooks Fiber and BellSouth by which Brooks Fiber opted into the 1997 Agreement, except as to Section VIII of the 1997 Agreement relating to business process requirements, as to which the parties substituted new terms.

8. Following the arbitration that took place in Docket No. 00-00309, MCImetro and Brooks Fiber executed follow-on interconnection agreements with BellSouth effective June 17, 2002 ("2002 Agreements"). In all material respects, the 2002 Agreements are identical except that one is signed by MCImetro and the other is signed by Brooks Fiber. The 2002 Agreements were approved by the Authority by Order dated September 20, 2002.

B. WorldCom's Attempts to Resolve Its Claims

9. The 1997 and 2002 Agreements provide that to commence a billing dispute, the billed party must submit a "notice of discrepancy" to the billing party. 1997 Agreement, Attachment VIII, Section 3.1.18.1 (in original and as amended by Brooks Fiber); 2002

Agreements, Attachment 8, Section 4.2.12.1. On or about April 12, 2002, WorldCom sent a notice of discrepancy concerning (among other things) the claims raised in this Complaint.

10. After a notice of discrepancy is submitted, the parties have sixty days under the 1997 and 2002 Agreements to resolve the disputes at the first level of management. 1997 Agreement, Attachment VIII, § 3.1.18.2 (in original and as amended by Brooks Fiber); 2002 Agreements, Attachment 8, § 4.2.12.4.1. BellSouth responded to the notice of discrepancy on or about May 8, 2002, generally disagreeing with WorldCom with respect to the claims at issue in this case. WorldCom and BellSouth were not able to resolve these claims at the first level of management.

11. If the parties are not able to resolve a billing dispute within sixty days, they are required under the 1997 and 2002 Agreement to escalate the dispute to the next level of management. 1997 Agreement, Attachment VIII, § 3.1.18.4.1 (in original and as amended by Brooks Fiber); 2002 Agreements, Attachment 8, § 4.2.12.4.1. Accordingly, WorldCom sought to escalate its claims to the second level of management on or about May 24, 2002.

12. On or about June 14, 2002, the parties met to discuss the disputes raised in this Complaint. After the issues were discussed, BellSouth promised to review WorldCom's claims and provide a response. BellSouth has never provided such a response.

13. Under the 1997 and 2002 Agreements, if a dispute is not resolved by the second level of management within thirty days (*i.e.*, 90 days from the notice of discrepancy), the parties escalate the dispute to the third level of management. 1997 Agreement, Attachment VIII, § 3.1.18.4.2 (in original and as amended by Brooks Fiber); 2002 Agreements, Attachment 8, § 4.2.12.4.2. WorldCom sought to do so on or about July 22, 2002. The parties did not resolve their disputes at the third level of management.

14. If a dispute is not resolved by the third level of management within thirty days (*i.e.*, 120 days from the notice of discrepancy), either party may seek dispute resolution from an appropriate forum. 1997 Agreement, Attachment VIII, § 3.1.18.4.3 (in original and as amended by Brooks Fiber); 2002 Agreements, Attachment 8, § 4.2.12.4.3. Because BellSouth has been unwilling to resolve WorldCom's claims, WorldCom has been left with no choice but to seek resolution by the Authority.

COUNT ONE

(Breach of Interconnection Agreements With Respect to DS1 Interconnection Trunks)

15. WorldCom incorporates paragraphs 1-14 of this Complaint as if fully set forth herein.

16. The 1996, 1997 and 2002 Agreements provide that WorldCom may order DS1 interconnection facilities from BellSouth. 1996 Agreement, §§ 3.03, 3.4; 1997 Agreement, Attachment I, § 7.2; 2002 Agreements, Attachment 4, § 1.5.

17. DS1 interconnection trunks connect WorldCom switches to BellSouth central offices for the purpose of exchanging traffic between the parties. DS1 interconnection trunks are capable of carrying twenty-four voice grade circuits at one time. Although WorldCom has been entitled to obtain DS1 interconnection trunks under the 1996, 1997 and 2002 Agreements, BellSouth has refused to bill WorldCom for these facilities at interconnection rates. Instead, BellSouth has billed, and continues to bill, WorldCom for these circuits at special access rates from BellSouth's interstate and intrastate access tariffs.

18. When a WorldCom local customer makes a long distance call that is processed by WorldCom's local switch, traverses WorldCom's interconnection trunk and then traverses BellSouth's network before being handed off to the long distance carrier, WorldCom and

BellSouth are entitled to their proportionate share of the originating local exchange access charges payable by the long distance carrier. Likewise, when a WorldCom local customer receives a long distance call that is handed off by the long distance carrier to BellSouth and then by BellSouth to WorldCom for switching and termination of the call, WorldCom and BellSouth are entitled to their proportionate share of the terminating local exchange access charges payable by the long distance carrier.

19. BellSouth is not entitled to bill WorldCom special access rates for local interconnection trunks on the theory that WorldCom's local customers make local and long distance calls carried over those facilities. WorldCom is *providing* local exchange access services to long distance companies when long distance calls are made or received by WorldCom's local customers, not *receiving* special access services from BellSouth. The 2002 Agreements address this situation expressly, stating that "[t]he Parties will establish Meet Point Billing arrangements in order to provide Switched Access Services to third party intraLATA and interLATA toll carriers via BellSouth's Access Tandem Switches, in accordance with MECAB guidelines." 2002 Agreements, Attachment 4, § 9.8.1. The 2002 Agreements further state that "[f]or interstate and intrastate traffic, the Parties will charge third party toll carriers in accordance with each Party's respective Commission or FCC filed and effective Switched Access tariff." *Id.*, Attachment 4, § 9.8.2. The 1996 and 1997 Agreement have similar requirements. 1996 Agreement, § 4.07; 1997 Agreement, Attachment VIII, § 3.1.25 (in original and as amended by Brooks Fiber).

20. BellSouth contends that it is entitled to apply special access rates to DS1 interconnection facilities according to the percentage of the facilities not used for local traffic. BellSouth further contends that because WorldCom has not provided a "Percent Local Facility"

figure for traffic carried over the DS1 interconnection facilities, BellSouth is entitled to apply special access rates to 100% of those facilities. BellSouth's contentions contradict the 1997 and 2002 Agreements, and are inconsistent with BellSouth's tariffs and applicable law.

21. BellSouth's practices of purporting to require WorldCom to provide a "Percent Local Facility" figure, and of billing DS1 interconnection trunks at special access rates, constitute breaches of the 1997 and 2002 Agreements. As a result of BellSouth's breaches, WorldCom has been required to pay substantially higher prices for DS1 interconnection trunks than the interconnection prices BellSouth is obligated to charge. WorldCom estimates that through December 2002, WorldCom has been required to overpay approximately \$1,251,087 for DS1 interconnection trunks in Tennessee.

22. BellSouth should be ordered to refund all amounts WorldCom overpaid for DS1 interconnection facilities through the date of BellSouth's compliance with the 1997 and 2002 Agreements, plus interest, and to bill WorldCom interconnection rates for DS1 interconnection facilities going forward. The Authority's Order should require the parties to work cooperatively to reach agreement on the exact amount due, with any disagreement in that regard to be resolved by the Authority if necessary.

COUNT TWO

(Breach of Interconnection Agreements With Respect to DS3 Transport)

23. WorldCom incorporates paragraphs 1-22 of this Complaint as if fully set forth herein.

24. A DS3 transport facility is a high capacity facility that can carry up to 672 voice circuits, or 28 DS1 trunks. The 1997 and 2002 Agreements provide that WorldCom may order DS3 transport.

25. WorldCom orders DS3 transport principally for interconnection and to provide the transport portion of a combination of DS1 loop and DS1 transport ("DS1 combo"). Although BellSouth is required to provide DS3 transport to WorldCom at UNE rates, BellSouth has refused to bill WorldCom for DS3 transport trunks at the applicable UNE rates. Instead, BellSouth has billed, and continues to bill, WorldCom for these circuits at rates from BellSouth's interstate and intrastate access tariffs.

26. BellSouth's refusal to bill WorldCom for DS3 transport at UNE rates constitutes a breach of the 1997 and 2002 Agreements. As a result of BellSouth's breach, WorldCom has been required to pay substantially higher prices for DS3 transport than the UNE prices BellSouth is obligated to charge. WorldCom estimates that through December 2002, it has been required to overpay approximately \$754,165 for DS3 transport in Tennessee.

27. BellSouth should be ordered to refund all amounts WorldCom overpaid for DS3 transport through the date of BellSouth's compliance with the 1997 and 2002 Agreements, plus interest, and to bill WorldCom for DS3 transport at UNE rates going forward. The Authority's Order should require the parties to work cooperatively to reach agreement on the exact amount due, with any disagreement in that regard to be resolved by the Authority if necessary.

COUNT THREE

(Breach of Interconnection Agreements With Respect to DS1 Combos)

28. WorldCom incorporates paragraphs 1-27 of this Complaint as if fully set forth herein.

29. In November 1997, MCImetro requested BellSouth to provision DS1 combos at UNE prices. MCImetro requested the DS1 combo so it could provide a high speed (1.544 mbps) transmission path or loop between a customer's premises and an MCImetro Class 5 local switch.

From this local switch, MCImetro and Brooks Fiber provide the customer with dial tone, as well as vertical features, operator services, directory assistance information, emergency 911 services and access to long distance networks.

30. After WorldCom sought to resolve its claims relating to BellSouth's refusal to provision DS1 combos at UNE prices in Tennessee, the parties entered into a Settlement Agreement effective September 13, 2000 ("Settlement Agreement") that, among other things, resolved those claims through the effective date of the Settlement Agreement. With respect to DS1 combo pricing after September 13, 2000, the Settlement Agreement provides:

Neither MCIIm nor any entity acting on its behalf shall file any actions, claims or disputes with the Tennessee Regulatory Authority, other state public service commissions, the FCC, or any state or federal court which seek compensation or damages for BellSouth's alleged failure to provide MCIIm with DS1 loop-transport combinations as unbundled network elements in Tennessee prior to the Effective Date of this Settlement Agreement. Going forward, BellSouth shall not price MCIIm's DS1 UNE services as access services in Tennessee but rather shall price them as unbundled network elements consistent with the FCC's June 2, 2000 Supplemental Order in CC Docket No. 96-98, *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996* (the "Order"), together with all other applicable interconnection agreements, and state and federal laws and regulations. The Order is referenced by way of example only, and by specifically making a reference to the Order, the Parties do not intend for the Order to carry any greater weight than that to which it is entitled by operation of law. This Settlement Agreement shall not preclude MCIIm from bringing new claims against BellSouth for similar causes of action, provided such similar causes of action relate only to BellSouth's practices after the Effective Date of this Settlement Agreement.

Settlement Agreement, ¶ 3.

31. Since September 14, 2000, BellSouth has refused to provision WorldCom's DS1 combo orders as DS1 combo circuits, but rather has provisioned them as special access circuits

and has charged WorldCom the higher special access rates for those circuits. BellSouth has purported to justify its actions on the ground that WorldCom ordered these circuits using the ASR process rather than BellSouth's manual LSR process. BellSouth's purported justification is groundless, because WorldCom was entitled to order DS1 combo circuits using the ASR process under the 1997 Agreement and the 2002 Agreements.

32. BellSouth's refusal to bill UNE rates for the DS1 combos WorldCom ordered since September 14, 2000 constitutes a breach of the 1997 Agreement, the Settlement Agreement and the 2002 Agreements. As a result of BellSouth's breaches, WorldCom has been required to pay substantially higher prices for DS1 combos than the UNE prices BellSouth is obligated to charge. WorldCom estimates that it has been required to overpay approximately \$2,615,657 for these circuits through December 2002.

33. BellSouth should be ordered to refund all amounts WorldCom has overpaid through the date of BellSouth's compliance with the 1997 Agreement, the Settlement Agreement and 2002 Agreements, plus interest, for the DS1 combos WorldCom ordered since September 14, 2000. The Authority's Order should require the parties to work cooperatively to reach agreement on the exact amount due, with any disagreement in that regard to be resolved by the Authority if necessary.

PRAYER FOR RELIEF

WHEREFORE, for the foregoing reasons, WorldCom respectfully requests that the Authority:

(1) On Count One, order BellSouth to provide WorldCom with a credit equal to the difference between (i) the special access price BellSouth charged WorldCom for DS1 interconnection trunks, and (ii) the price BellSouth should have charged for DS1 interconnection

trunks under the 1996, 1997 and 2002 Agreements, through the date of BellSouth's compliance with the 1996, 1997 and 2002 Agreements, plus interest;

(2) On Count One, order BellSouth to charge WorldCom the interconnection rates specified in the 2002 Agreements on all existing DS1 interconnection trunks going forward and to provision all future requests by WorldCom for DS1 interconnection trunks under the 2002 Agreements at the interconnection rates specified therein;

(3) On Count Two, order BellSouth to provide WorldCom with a credit equal to the difference between (i) the special access price BellSouth charged WorldCom for DS3 transport, and (ii) the price BellSouth should have charged for DS3 transport under the 1997 and 2002 Agreements, through the date of BellSouth's compliance with the 1997 and 2002 Agreements, plus interest;

(4) On Count Two, order BellSouth to charge WorldCom the UNE rates specified in the 2002 Agreements on all DS3 transport going forward and to provision all future requests by WorldCom for DS3 transport under the 2002 Agreements at the UNE rates specified therein;

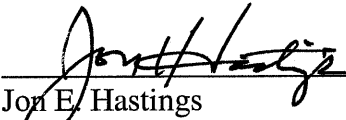
(5) On Count Three, order BellSouth to provide WorldCom with a credit equal to the difference between (i) the access price BellSouth charged WorldCom for DS1 combos, and (ii) the price BellSouth should have charged for DS1 combos under the 1997 Agreement, the Settlement Agreement and the 2002 Agreements, through the date of BellSouth's compliance, for the DS1 combos WorldCom ordered since September 14, 2000, plus interest;

(6) On Count Three, order BellSouth going forward to charge WorldCom the applicable UNE rates on all DS1 combos ordered since September 14, 2000 that BellSouth has not billed at the DS1 combo rate; and

(7) Order such further relief as the Authority deems just and appropriate.

RESPECTFULLY SUBMITTED this 19th day of February, 2003.

By:

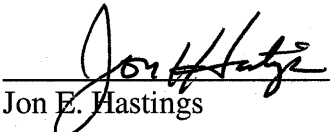

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CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing has been hand delivered or mailed to Guy M. Hicks, BellSouth Telecommunications, Inc., 333 Commerce Street, Suite 2101, Nashville, Tennessee 37201-33300 on this the 19th day of February, 2003.


Jon E. Hastings